

Jessica Laue (“Mother”) appeals the trial court’s order terminating her parental rights as to her child, K.J.L. She raises three issues, which we consolidate and restate as:

- I. Whether sufficient evidence was presented to support the trial court’s decision to terminate Mother’s parental rights; and
- II. Whether Mother’s due process rights were violated when the termination hearing was not held within ninety days of the date when the petition to terminate was filed.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 20, 2000, K.J.L. was born to Mother and Joshua Chesterfield.¹ After K.J.L.’s birth, Mother frequently moved and lived with several different men. The Greene County Division of Child Services (“DCS”) first became involved with K.J.L. in June of 2001 on a complaint that K.J.L. was not being properly supervised at home. An investigation occurred and services were offered to Mother, which she declined. The complaint of endangering conditions and lack of supervision was substantiated by DCS against Mother.

In November of 2001, DCS received another complaint regarding dangerous conditions in Mother’s home. At that time, Mother was living with Troy Lowe. When DCS investigated the complaint, they discovered several loaded firearms and knives lying around the apartment. The complaint was substantiated, and Mother entered into an Informal Adjustment with DCS through which she began receiving services. The Informal Adjustment was subsequently dismissed on February 7, 2001 because Mother sent K.J.L. to live with Janet Skinner, K.J.L.’s maternal grandmother (“Grandmother”).

¹ Chesterfield is not a party to this appeal and was incarcerated on a burglary conviction

In July of 2002, Mother and K.J.L. moved in with Mother's boyfriend, Doug Wilson. On January 29, 2003, DCS received another complaint regarding dangerous conditions of Mother's home. DCS investigated and substantiated the complaint and services were offered to Mother, which she refused.

On August 23, 2003, DCS received yet another complaint alleging that K.J.L. was endangered in Mother's home. At that time, Mother was living with Dave Rooney. Through its investigation, DCS discovered that K.J.L. had suffered a series of bruises on her face, ear, and chest area that were determined to be non-accidental in nature, resulting from separate events, and in various stages of healing. Although Mother initially lied about the cause of K.J.L.'s injuries, she later admitted that she knew that Dave Rooney had hit K.J.L., but had lied because she was afraid of getting him in trouble. Because of these injuries to K.J.L., she was removed from the home, and a Child in Need of Services ("CHINS") petition was initiated by DCS. On May 13, 2004, K.J.L. was adjudicated a CHINS, and a dispositional order was entered. Pursuant to this order, K.J.L. was returned to Mother's care to attempt reunification.

On September 30, 2004, Mother was living with Conway Dallas Waddell, and on that date, DCS received a complaint that Waddell had been arrested for having eight and a half pounds of marijuana in the basement of the home. DCS went to the home to conduct an investigation, and when asked, Mother denied any knowledge of the marijuana being in the home. While DCS was at the home, Waddell became very angry, and DCS removed K.J. L. from the home at that time. Family Case Manager, Heather Perkins, asked K.J.L. if Waddell

at the time of the termination hearing.

had ever gotten mad like that before, and K.J.L. said yes. *Appellant's App.* at 19; *Ex.* 11. Perkins then asked if Waddell had ever spanked K.J.L., and she answered, "He lights me up." *Id.* When asked what that meant, K.J.L. told Perkins that Waddell whipped her sometimes with his hand and sometimes with a belt. *Id.* On November 19, 2004, at a review hearing on the CHINS case, the trial court modified the dispositional order and placed K.J.L. with Grandmother.

Mother continued to have problems completing the conditions in the CHINS dispositional order, which would allow K.J.L. to be returned to her care. She participated in the services ordered, such as therapy, parenting classes, and homemaker services, but she had several no-shows for therapy. At one point, Mother dropped out of all her services from August 31, 2005 to September 26, 2005, and her whereabouts were unknown to DCS. Mother also failed to maintain suitable housing and employment. She continued to move from place to place, living with Grandmother, friends, and other boyfriends.

On May 27, 2005, DCS filed a petition to terminate Mother's parental rights because Mother was not making any progress toward reunification and because K.J.L. needed permanency. A hearing was held on the termination petition on December 16, 2005. At the conclusion of the hearing, the trial court entered an order terminating Mother's parental rights as to K.J.L. Mother now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment of the United States Constitution protects the rights of parents to establish a home and raise their children. *In re L.V.N.*, 799 N.E.2d 63, 68 (Ind. Ct. App. 2003). Although parental rights are constitutionally protected, they are not absolute and must be subordinated to the children's interest when determining the proper disposition of a petition to terminate parental rights. *In re D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998). The purpose of terminating parental rights is not to punish parents but to protect their children. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Termination of parental rights can be proper not only when the child is in immediate physical danger, but also when the child's emotional and physical development is threatened. *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*.

Because the trial court in this case entered findings and conclusions of law, the specific findings control only as to the issues they cover, and the general judgment controls as to the issues upon which the court has not made findings. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003). The specific findings will not be set aside unless they are clearly erroneous, and we will affirm the general judgment on any legal theory supported by the evidence. *Id.* When we review the trial court's findings, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We consider only the evidence and reasonable inferences drawn therefrom, which support the verdict. *Id.* A judgment is clearly erroneous when it is unsupported by the findings and conclusions entered upon those findings. *Id.* at 198-99. We will only reverse a termination of parental rights on appeal upon a showing of clear error, which leaves us with a

definite and firm conviction that a mistake has been made. *Id.* at 199.

Mother argues that DCS failed to present sufficient evidence to support the termination of her parental rights. In order to effect the termination of a parent-child relationship, DCS must establish that:

(A) one of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b)(2). These allegations must be proven by clear and convincing evidence. IC 31-37-14-2; *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

Mother appears to specifically contend that DCS did not prove by clear and convincing evidence that the conditions that resulted in the removal of the child would not be

remedied, that the continuation of the parent-child relationship posed a threat to the well-being of the child, and that termination was in the best interests of the child.²

I. Sufficient Evidence

A. Conditions That Resulted in Removal Will Not Be Remedied

Although Mother appears to raise both elements of IC 31-35-2-4(b)(2)(B) on appeal, because the statute is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. We focus our review on the first element.

“Where there is a reasonable probability that the conditions that resulted in the child’s removal will not be remedied the parent-child relationship can be terminated.” *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). The trial court must judge a parent’s fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d at 721. The trial court must also evaluate the parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*; *In re C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). A trial court may properly consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride*, 798 N.E.2d at 199.

Mother argues that DCS failed to prove by clear and convincing evidence that the

² Mother does not challenge that the child had been removed from her care for the requisite amounts of time or that there is a satisfactory plan for the care and treatment of the child.

conditions that resulted in removal would not be remedied because she has basically complied with most of the requirements that were set out in the dispositional order. She contends that her performance of these requirements was not deficient enough to justify the termination of her parental rights. These arguments essentially ask this court to reweigh the evidence presented at the hearing, which we will not do on review. *See In re D.G.*, 702 N.E.2d at 780.

The evidence most favorable to the judgment shows that Mother had made no progress toward changing the circumstances that resulted in the removal of K.J.L. Evidence was presented that Mother had repeatedly been involved in relationships with men who have either physically abused K.J.L. or engaged in illegal or harmful behaviors in the home. DCS substantiated four cases against Mother for endangering K.J.L. due to dangerous home conditions and lack of proper supervision. These included a time where several loaded firearms and knives were found to be lying around the home, a time where Mother's boyfriend had hit K.J.L. and left bruises on her face, ear, and chest area, and a time where Mother's boyfriend was arrested because eight and a half pounds of marijuana were found inside the home. During both the CHINS and termination proceedings, Mother was unable to maintain adequate housing. She moved frequently in and out of the homes of various boyfriends, friends, and Grandmother. Mother was also unable to maintain employment during this time. Although Mother participated in the services required by DCS, she had several no-shows and cancellations for her therapy appointments. Additionally, in August of 2005, Mother dropped out of services without notice or explanation. Her whereabouts were

unknown, and she did not have contact with DCS providers from August 31 until September 26. The trial court did not err in finding that DCS proved that there existed a reasonable probability that the conditions that resulted in the removal of the children would not be remedied.

B. Best Interest of the Child

Mother also argues that there is insufficient evidence to prove that termination of her parental rights was in the best interest of K.J.L. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Testimony of the DCS caseworker and the Court Appointed Special Advocate (“CASA”) has been found to be sufficient to support the trial court’s conclusion that termination was in the best interest of the child. *McBride*, 798 N.E.2d at 203.

Here, the totality of the evidence demonstrated that the termination of parental rights was in the best interest of K.J.L. The evidence most favorable to the judgment showed that Mother had a history of frequently moving from one residence to another, sometimes living with friends, boyfriends, or Grandmother. She also had a history of frequent relationships with men who physically abused K.J.L. and engaged in illegal or harmful activities in the home where Mother and K.J.L. were living. K.J.L.’s therapist testified that there was a lot of inconsistency in K.J.L.’s life when she was living with Mother due to the frequent moving and the many different boyfriends, each called “Daddy” by K.J.L. *Tr.* at 106. Her therapist stated that K.J.L. needed consistency and predictability and that continuation of the situations

in which K.J.L. was previously involved with Mother would be significantly detrimental to her well-being. *Id.* at 109. The DCS case manager testified that K.J.L. needed security and permanency in her life and that termination was in the best interest of K.J.L. *Id.* at 184-85. The CASA also testified that in her opinion termination of the parent-child relationship was in the best interest of the child. *Id.* at 247. Therefore, based upon the totality of the evidence, the trial court's finding that termination was in the best interests of the children was supported by the evidence. The trial court did not err in granting the petition to terminate Mother's parental rights.

II. Timing of Hearing

Mother contends that her due process rights were violated because the termination hearing was not timely held. She argues that under IC 31-35-2-6 and IC 31-35-2-4.5 the DCS was required to file a petition to terminate parental rights, to request that the petition be set for hearing, and the hearing must be set no more than ninety days after the petition is filed. In this case, the petition to terminate was filed on May 27, 2005, a request for hearing was filed on September 9, 2005, and the hearing was held on December 16, 2005. Without determining if the termination hearing was timely held, we conclude that Mother has not shown how she was harmed by the timing of the hearing. In the months between the filing of the petition and the hearing on the petition, Mother was able to benefit from the services offered by DCS, and she was still able to attend supervised visitations with K.J.L. She has therefore not shown any harm resulting from any delay in the setting of the hearing.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.

